IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7088 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PHONEX PHARMACEUTICALS - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MS JIRGA D JHAVERI for Petitioner No(s).: 1.
Ms. Archna Rawal, AGP for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 28/06/2005

ORAL JUDGMENT

1. Rule. Ms. Archna Rawal, learned AGP appears and waives service of notice of rule on behalf of the respondent.

2. By filing instant petition under Article 226 of the Constitution, the petitioner seeks to challenge the order dated 7.2.2005 rendered in Civil Misc. Application No. 41 of 2003 by the learned Judge, Court No.18, City Civil Court, Ahmedabad by which the application filed by the petitioner seeking condonation of delay in filing application for restoration of Civil Suit No.1449 of

1989 came to be allowed with costs of Rs.5,000/-.

3. The petitioner has filed Civil Suit No.1449 of 1989. The Court had granted interim relief till final hearing of the suit. The matter was thereafter referred to the Court Fee Inspector and the Court Fee Inspector issued notice for additional Court Fees. The Advocate for the petitioner remained present and asked for the time. The advocate for the petitioner had given an application for extension of time for payment of Court fees and the application was allowed but no date was given at that time. Even after inquiry also no date was given. Thereafter the petitioner had gone to America and hence the petitioner could not personally visit the advocate as well and it was not aware about the date.

4. The matter was on Court Fee Reference Board instead of Regular Board and the Court passed an order in Reference No.4 of 2001 to pay the Court fee amount upto 14.8.2002. As it was a final order, according to the procedure, it should have been placed on Regular Suit's Board but it did not come on Regular Board. Instead of placing it on regular board it was placed on reference board and the advocate for the petitioner was not aware of this fact and hence the suit came to be dismissed for default.

5. The petitioner received a notice from Recovery Officer for recovery of the deficit court fees. The petitioner paid the deficit court fee amount. Upon inquiring from the office, the petitioner was informed that the matter would be placed on regular board for orders. But instead of coming on the Board, the petitioner received a notice from the respondent for recovery of the dues. The petitioner immediately filed application for restoration and for condonation of delay. The Court allowed the

application for condoning the delay on 7.2.2005 but imposed cost of Rs.5000/- Hence the petitioner has filed this petition.

6. Mr. SK Jhaveri with Ms. Jirga Jhaveri, learned advocate for the petitioner, has contended that on the facts and circumstances of the case, the imposition of heavy cost of Rs.5,000/- on the petitioner while allowing the application seeking condonation of delay in filing application for restoration of Civil Suit No. 1449 of 1989 is absolutely unwarranted as there was no fault on the part of the petitioner. The suit was listed before the Regular Board and it as listed before the reference Board of court fees Board. Therefore, the learned advocate of the petitioner could not attend to the matter. He therefore urged that the order of imposition of costs of Rs.5,000 may be set aside by allowing this petition.

7. Ms. Archna Rawal, learned AGP for the respondent has submitted that this is a petition filed under Article 226 of the Constitution of India and therefore normally court should not interference. However, she urged that appropriate orders reducing the amount of costs may be passed.

8. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned order.

9. So far as the question of condonation of delay is concerned, it has to be decided having regard to the principles laid down by the Supreme Court in the case of (i) State of Bihar & others v. Kamleshwar Prasad Singh & another, 2000 AIR SCW 2388 (paras 11 to 14 of the reported judgment), (ii) N. Balakrishnan v. M. Krishnamurthy, Judgment Today, 1998 (6) SC 242, (iii) State of

Haryana v. Chandra Mani & others, AIR 1996 SC 1623, (iv) Spl. Tehsildars, Land Acquisition, Kerala v. K.V. Ayisumma, AIR 1996 SC 2750, (v) Punjab Small Industries and Export Corporation Limited and others v. Union of India and others, 1995 Suppl. (4) SCC 681, (vi) P.K. Ramachandran v. State of Kerala and another (1997) 7 SCC 566 and (vii) Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353 and other relevant decisions on the point.

10. Applying the principles laid down by the Supreme Court in the above referred to judgments to the facts of the present case, it can be seen that the learned trial Judge has very rightly exercised powers by condoning the delay caused in filing the application for restoration of the main suit. However, looking to the peculiar facts and circumstances of the case, imposition of cost of Rs.5,000 according to this court, is totally unwarranted as it is settled principle of law that no matter shall be thrown overboard without hearing the aggrieved party and in the instant case there is no fault on the part of the advocate of the petitioner as the matter was not listed on regular board and the petitioner was at the relevant time was abroad which has caused delay. Therefore delay has been sufficiently explained.

11. In aforesaid view of the matter, imposition of cost, according to this court, is unwarranted which is deserved to be quashed and set aside.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 7.2.2005. passed by the learned Judge, Court No.18, City Civil Court, Ahmedabad in Civil Misc. Application No. 41 of 2003 qua

imposition of cost of Rs.5,000/- on the petitioner is hereby quashed and set aside. Rule is made absolute.

13. The amount of Rs.5,000/- deposited by the petitioner before the trial court is directed to be refunded to the petitioner forthwith on due verification.

(A.M. Kapadia, J.)

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